

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALLAN J. VIERLING, II
Claimant

VS.

GREIF BROS. CORPORATION
Respondent
Self-Insured

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Docket No. 205,868

ORDER

Claimant appeals from the Award of Administrative Law Judge Steven J. Howard dated February 6, 1998. Oral argument was heard July 21, 1998.

APPEARANCES

Claimant appeared by his attorney, Steven R. Jarrett of Overland Park, Kansas. Respondent, a self-insured, appeared by its attorney, Kip A. Kubin of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability? The only issue before the Appeals Board is whether claimant's functional impairment is limited to his left hand or whether it extends into the left upper extremity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Findings of Fact

Claimant suffered an accidental injury arising out of and in the course of his employment with respondent on September 21, 1995, when his left hand was caught in an operating press. He underwent two surgeries with Dr. Robert L. Coleman to repair the fractures, ligament damage, and nerve damage. Claimant has currently returned to work with Greif Brothers.

Claimant suffers from limited motion in the fingers on his left hand and has reduced sensation in his middle and ring fingers of the left hand. He has difficulty picking things up, only using his index finger and thumb, and has substantially reduced strength in his left hand. He has also noticed, since the accident, reduced mobility in the left arm. His left arm will not straighten all the way out.

Claimant was examined at respondent's request by Dr. Lanny W. Harris, an orthopedic surgeon. Dr. Harris assessed claimant a 55 percent impairment to the left hand at the wrist level based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. While Dr. Harris' report does say 55 percent of the left hand at the wrist level, when cross-examined, Dr. Harris advised there was no disability into the wrist or the forearm but was, instead, limited to the hand. Dr. Harris did note some atrophy in claimant's left forearm but did not factor this into his rating. He testified that when he checked claimant's wrist, he had a full range of motion and, therefore, did not assess any impairment for the wrist.

As a result of a dispute between the evaluating doctors, claimant was referred for an independent medical exam by the Administrative Law Judge to Dr. John Michael Quinn, a board-certified plastic surgeon in Overland Park, Kansas. Dr. Quinn examined claimant on January 20, 1997. He referred claimant to the Outpatient Rehabilitation Department at Overland Park Regional Medical Center for functional capacity testing of the hand. Claimant was evaluated by Barbara O'Connor at the Overland Park facility.

Dr. Quinn assessed claimant a 33 percent impairment to the hand with no impairment to the wrist or forearm. He considered claimant's limitation of range of motion of the middle, ring, and small fingers, but there were several findings on the FCE that Dr. Quinn did not consider in his analysis. The FCE indicated an impairment to the index finger which Dr. Quinn did not compute into his ratings. When asked why, he stated it could either be an oversight on his part or that, when he examined claimant, he found no limitations to the index finger. He acknowledged that, if he computed the impairment to the index finger, it would increase the claimant's overall impairment. The FCE also indicated loss of sensation in the long and the ring fingers which would increase Dr. Quinn's impairment rating. Again, Dr. Quinn stated he didn't find any abnormalities when examining claimant in his office. A loss of sensation in these two fingers would increase the impairment rating.

The FCE indicated claimant suffered a substantial reduction in strength in the left hand. Dr. Quinn confirmed he chose not to include the loss of strength in his impairment rating, but agreed if it were included it would increase the ratings. Claimant, during the FCE, exhibited diminished ulnar deviation on the left which, if considered in the impairment rating, would also increase Dr. Quinn's impairment rating. Dr. Quinn, like Dr. Harris, provided no impairment with

relation to any diminished motion at the wrist or any atrophy into the forearm. He stated that he did not note these on his examination and as a result, did not add them to his functional impairment rating.

Conclusions of Law

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. K.S.A. 44-501 and K.S.A. 1995 Supp. 44-508(g).

In this instance, the claimant is limited to a functional impairment to the hand. While there were symptoms and complaints and potential atrophy in the wrist and the forearm, there is no medical expert opinion of a functional impairment beyond the hand. As such, the Appeals Board finds that claimant's scheduled injury is limited to the hand and not the forearm.

At the time of the settlement conference and again after the regular hearing, claimant was cautioned by the Administrative Law Judge that the opinions of independent medical examiners appointed by the court, in the absence of fraud or mistake, are generally adopted by the Administrative Law Judge at the time of the Award. The Appeals Board acknowledges the use of independent medical examinations is a valuable tool of Administrative Law Judges in obtaining unbiased opinions regarding what impairments and disabilities may result from a work-related injury. However, blind adoption of independent medical examinations may lead to injustice when awarding workers compensation benefits.

In this instance, the Administrative Law Judge adopted the independent medical opinion of Dr. John Michael Quinn. Although Dr. Quinn is well qualified to provide an opinion regarding claimant's functional impairment, a review of his deposition raises doubts about his opinions in the minds of the Appeals Board. Dr. Quinn referred claimant to the Outpatient Rehabilitation Department in Overland Park Regional Medical Center for specific testing on the left hand. When Dr. Quinn received the functional capacity evaluation from the Overland Park facility, he rejected several findings made during the FCE. With regard to the findings dealing with the limitation to claimant's index finger and the loss of sensation in the long and ring fingers, the Appeals Board acknowledges variations may occur during the different examinations which could justify these exclusions by Dr. Quinn. However, the Appeals Board notes Dr. Quinn provided no impairment percentage for the loss of strength suffered by claimant in his left hand. Claimant's use of his left hand is almost totally limited to the use of the index finger and thumb. Claimant has substantially less than normal strength in his left hand, with ongoing pain. The Appeals Board has difficulty imagining a laborer, who loses the use of three out of his four fingers, not suffering some substantial loss in strength in that extremity. The Appeals Board finds the failure or refusal by Dr. Quinn to consider loss of strength as a portion of the impairment to claimant's left hand to be an omission not justified by the record. In so finding, the Appeals Board finds Dr. Harris' opinion more persuasive.

The Appeals Board therefore finds that the opinion of Dr. Harris that claimant has suffered a 55 percent functional impairment to the left hand is the most credible opinion and is adopted for the purpose of this Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard dated February 6, 1998, should be, and is hereby, modified.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Allan J. Vierling, II, and against the respondent, Greif Bros. Corporation, a self-insured, for an accidental injury which occurred September 21, 1995, and based upon an average weekly wage of \$346.29 for 11.57 weeks of temporary total disability compensation at the rate of \$230.87 per week or \$2,671.17, followed thereafter by 76.14 weeks permanent partial disability compensation at the rate of \$230.87 per week totaling \$17,578.44, for a 55% loss of use of the left hand, making a total award of \$20,249.61. As of the time of this Award, the entire amount is due and owing in one lump sum minus amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not conflict with the findings contained herein.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Jarrett, Overland Park, KS
Kip A. Kubin, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director